quotes from Mr. Justice BRADLEY'S opinion in *Boyd* v. *United States,* 116 U. S. 616, 631, 633, that "any compulsory discovery by extorting the party's oath, or compelling the production of his private books and papers, to convict him of crime, or to forfeit his property, is contrary to the principles of a free government. It is abhorrent to the instincts of an Englishman; it is abhorrent to the instincts of an American. It may suit the purposes of despotic power, but it cannot abide the pure atmosphere of political liberty and personal freedom."

Nevertheless, it may still be true that there are very important personal rights, those named, for example, in the first eight Amendments, that are not necessarily "privileges and immunities of citizens of the United States" within the meaning of the 14th Amendment. *Maxwell* v. *Dow,* 176 U. S. 581.

TRANSFER OF NEGOTIABLE INSTRUMENT WITHOUT ENDORSEMENT.—A case has been recently decided by the Supreme Court of Colorado, upon a condition of facts which it seems, has not an exact parallel in any of the reports. After being in litigation for more than eleven years the question involved was finally settled by the court of last resort of that state. In effect the decision goes to the extent of saying, that when a note is endorsed specially and afterwards comes back to the party making such special endorsement, and the party reissues the same without striking out his endorsement, no new endorsement is necessary, since the special feature is obliterated by the reissue. In legal effect it is considered as a general endorsement or an endorsement in blank.

The case was one of some importance. A mining company made its note for $5,000, payable to its president, who by proper endorsement passed title in it to the First National Bank of Ouray. The bank endorsed it specially as follows: "Pay to the Order of L. L. Bailey, First National Bank of Ouray, by A. G. Siddons, Cashier." The note was subsequently endorsed back to the bank by L. L. Bailey. Suit was commenced by L. L. Bailey against the mining company. There was no defense to the action, but before judgment was taken negotiations were begun between Bailey, representing the bank and the city of Ouray, for a trade or exchange of the note by the bank for certain of its certificates of deposit which the city held, in all to the amount of $5,000, these certificates representing sums which the city had on deposit with the bank. The exchange was consummated, the city giving up the certificates for the note, with the bank's endorsement remaining thereon. The complaint alleged that the bank, as a part of the consideration, agreed with the city that the bank's endorsement theretofore placed upon the note should constitute and be in lieu of a new endorsement, and that the bank would be liable to the city as an endorser, without other or further endorsement being made by it. Bailey took judgment against the maker of the note and assigned the same to the city. The judgment secured in that suit was worthless. The maker was insolvent and shortly after the bank also ceased to be a going concern and the co-defendants, three partners, entered into an agreement whereby they assumed the indebtedness of the bank, in

consideration of the transfer of its assets to them. The action is brought by the treasurer of the city of Ouray against the First National Bank of Ouray and the partners. *Held,* the defendant bank is estopped to deny its liability to its transferee as endorser in blank. The obligation may be enforced against the partners. *Moore* v. *The First National Bank of Ouray,* 38 Colo. 336, 88 Pac. 385, 10 L. R. A. (N. S.) 260.

In the past, courts have been unanimous in holding upon several propositions involved in the transfer of a negotiable instrument without endorsement. The legal title to the instrument does not pass by mere delivery. This was the rule under the lex mercatoria. *Trust Company* v. *National Bank,* 101 U. S. 68; *Keller* v. *Williams,* 49 Ind. 504; *Richards* v. *Daily,* 34 Ia. 427; *Calvin* v. *Sterritt,* 41 Kan. 215; *Lancaster National Bank* v. *Taylor,* 100 Mass. 18; *Franklin Bank* v. *Raymond,* 3 Wend. 69. Statutes have also made provision to the same effect. That the legal title to the instrument will not pass, unless the endorsement be made "under the hand of the person to whose order it is made payable" is found in the Statutes of Illinois and Colorado and other states. 2 Starr and Curtis, A. S. 1654, § 4; Mills, A. S., § 244. The Negotiable Instruments Law recently enacted in Michigan provides that the transferee is entitled to the endorsement of the transferrer, when such is not made at the time of the delivery. N. I. L. Mich., § 51.

By such an endorsement, an equitable title in the note is acquired by the transferee. *Foreman* v. *Beckwith,* 73 Ind. 515. Under the rules of the common law, in such a suit as the principal case presents, the holder of the equitable title could not recover against the endorser, who in this case is the holder of the legal title, for the reason that no judgment could be given in favor of one against himself. *Bartholomew* v. *Fortier,* 31 Ill. 212; *People's Bank* v. *Bogart,* 81 N. Y. 101; *Robinson* v. *Wilkinson,* 38 Mich. 299. A party who has but an equitable interest in the note takes the same subject to whatever defences and equities existed against the holder of the legal title. 4 Am. & Eng. Encyc. of Law (Ed. 2), 253 n. 1.

In the case of *Martin* v. *Cole,* 3 Colo. 113, the court said that the contract of endorsement was made up of two contracts, neither one of which could be made orally. The endorsement assigns the legal title to the note and also is evidence of an agreement that the endorsers will pay, if not collectable from the maker after the exercise of due diligence. 4 Encyc. of Law, 478, note 5 and cases cited. The legal effect of a transfer of a negotiable instrument cannot be changed by force of a contemporaneous oral agreement, whatever the intention of the parties to the contract may be. *Dale* v. *Gear,* 38 Conn. 15, 9 Am. Rep. 353. The language of the endorsements found upon the instrument is alone to be considered in determining the effect of the transfer. *Doolittle* v. *Perry,* 20 Kan. 230, 27 Am. Rep. 166.

Those who guarantee the payment of the debt of another are liable upon such contract provided the principal is liable, and if the principal be not liable, then no burden falls upon the shoulders of the guarantor.

An interesting limitation is sometimes put upon that section of the Codes which provides that the real party in interest may prosecute the suit in his

own name, when the contract upon which the suit is brought was entered into out of the regular course of the defendant's business. The courts have said in such cases, that the plaintiff must show that he is actually the party intended to be benefitted by the contract in question. *Sayward* v. *Dexter, Horton & Co.*, 19 C. C. A. 176; 72 Fed. 758; *Montgomery* v. *Spencer*, 15 Utah 495, 50 Pac. 623.

In the principal case, the decision rested mainly upon the construction put upon one case, that of *Brook* v. *Van Nest*, 58 N. J. L. 152. The case cited differs from the principal case in two important respects. In the New Jersey case the suit was against the makers of the note and not against the endorsers. The endorsements in the cases were not the same. In the principal case the endorsement was special, and in the other case it read, "For discount and credit of ————," who was the transferrer of the note. While this latter endorsement was undoubtedly restrictive, it was not to any specially named person, whose endorsement would have been necessary to the further negotiation of the note. It would seem that upon authority, the case of *Moore* v. *The Bank* was not correctly decided. W. A. H.